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No. 85-2157

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

THE ALUMINUM ASSOCIATION, INC., and
NATIONAL ASSOCIATION OF RECYCLING INDUSTRIES, INC.,
Petitioners,

v.

NORFOLK AND WESTERN RAILWAY COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MEMORANDUM OF THE RESPONDENT RAILROADS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly construed Section 204 of the Staggers Act of 1980, 49 U.S.C. § 10731(e), to preclude duplicative reductions and refunds of non-ferrous recyclable rates previously found to be in aggregate compliance with Section 204?

2. Whether the Court of Appeals correctly found, based on its review of the record in this case including pertinent pleadings and prior agency orders, that the railroads' challenge to such duplicative reductions and refunds was timely?

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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MEMORANDUM OF THE RESPONDENT RAILROADS IN OPPOSITION

The respondent railroads [1] join the respondents United States and Interstate Commerce Commission in opposing the petition for certiorari in this case.[2]

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[1] The railroad respondents are listed at p. 1a, below, and the information required by Rule 28.1 is provided at p. 1b, below.

[2] The certiorari petition is cited as "Pet.____" and the separate appendix as "Pet. App.____"

STATEMENT OF FACTS

In 1980, Congress enacted the Staggers Act, 94 Stat. 1895, primarily to reduce excessive railroad regulation and improve the opportunity of financially hard-pressed railroads to earn adequate revenues. In Section 204 (reprinted Pet. 2), now codified at 49 U.S.C. § 10731(e), Congress adopted a special provision governing rates on recyclable commodities other than iron and steel scrap. Section 204 required that railroads reduce rates on such recyclables within 90 days to a formula-based "cap" level and provided that thereafter any rate that exceeded that level should not be required to bear any further rate increase.[3]

Less than a year after passage of the Staggers Act, the D.C. Circuit construed Section 204 in *NARI III*.[4] The court held that under the first sentence of Section 204 an immediate reduction of recyclable rates to the cap level was required and that it could be computed on the basis of territorial averages. 660 F.2d at 799.[5] Thereafter, under the second sentence of Section 204, any individual rate that still exceeded the cap level could not be increased until it had fallen below the cap level. *Id.*

On remand from *NARI III*, the ICC in October 1981 ordered immediate reductions of recyclable rates to the

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[3] The cap level, recomputed periodically by the ICC under the statutory formula, establishes a cap on rates based on the variable costs of the traffic.

[4] *National Ass'n of Recycling Industries* v. *ICC*, 660 F.2d 795 (D.C. Cir. 1981).

[5] The use of territorial averages treats groupings of rates (*e.g.*, rates on all copper scrap moving within the West) as a unit for purposes of making adjustments. Such averaging is widespread in utility and carrier ratemaking and territorial averages had been used in prior ICC recyclable proceedings.

cap level, including refunds from the effective date of Section 204.[6] The ICC specifically approved the use of territorial averages in making such adjustments, specifying the territorial average groupings to be used. 365 I.C.C. at 305-07 (Pet. App. 98a-101a). The railroads complied by reducing their recyclable rates and paying millions of dollars in refunds to shippers based on the territorial average computations approved by the Commission.[7] In approving the use of territorial averages, the ICC expressly concluded that "this method will best serve the purposes Congress intended to achieve with section 204." *Id.* at 307 (Pet. App. 101a). After investigation and minor adjustments, the Commission concluded that the railroads were in compliance with its decision.[8]

Following the railroads' reductions and refunds, several shippers filed complaints attacking the *same* rates, requesting additional millions of dollars in reductions and refunds. The shippers' theory was that, because the use of territorial averages necessarily left some individual rates above the cap level and some below it, shippers were entitled to "sharpshoot" those individual rates that remained above the cap level. The railroads protested to the Commission that the use of territorial averages had been approved by *NARI III* and the Commission itself

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[6] *Ex Parte No. 394,* 365 I.C.C. 304 (1981) (reprinted Pet. App. 96a), *modified,* order served November 27, 1981 (reprinted Pet. App. 92a), *aff'd sub nom. Baltimore & O.R.R.* v. *ICC,* No. 82-1066 (D.C. Cir., June 9, 1982) (reprinted Pet. App. 107a).

[7] Conrail chose a different course, later upheld by the Commission, which involved cancellation of its joint rates on recyclables and the substitution of new scale rates applicable only to Conrail traffic. Chessie followed the Conrail approach for some commodities. Virtually all of the other railroads followed the territorial average approach approved by the Commission.

[8] *Ex Parte No. 394,* served December 6, 1982 (reprinted Pet. App. 75a); *Ex Parte No. 394,* served May 20, 1983 (reprinted Pet. App. 52a).

and that the new complaints would permit duplicative reductions and recoveries. Nevertheless, in July 1983 the Commission held that complaints to obtain such further reductions and refunds would be permitted.[9]

In the decision sought to be reviewed in this case—*NARI VI*[10]—the D.C. Circuit reversed the ICC. Construing Section 204 consistently with *NARI III*, the court held that the railroads had properly complied with the statute by making their reductions and refunds on a territorial average basis, as approved by the Commission itself. The court said that Section 204's second sentence provided the explicit remedy for any individual rates that remained above the cap by forbidding further increases in those rates until they were eroded by inflation to below the cap level. The court did not preclude shippers from using complaints to attack individual recyclable rates where shippers alleged that individual rates already above the cap level had been impermissibly increased.[11]

ARGUMENT

This case meets none of the traditional requisites for certiorari. The decision below involved a one-time construction of a regulatory statute on a single limited issue: whether recyclable rates, already reduced to the cap level on a territorial average basis, could be the subject of

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[9] *Ex Parte No. 394*, 367 I.C.C. 623 (1983) (reprinted Pet. App. 25a).

[10] *Norfolk & W. Ry.* v. *ICC*, 768 F.2d 373 (D.C. Cir. 1985) (reprinted Pet. App. 1a). *NARI VI* is the *B&O* case (cited p. 3, n.6, above); and *NARI V* (cited Pet. 4, n.2) involved Conrail's tariffs complying with Section 204. See p. 3, n.7, above.

[11] Following the court's decision, the ICC invited the shippers to amend their pending complaints to conform to *NARI VI* or to file new complaints making such allegations. *Ex Parte No. 394*, decided June 6, 1986, p. 3 & n.3.

"sharpshooting" complaints seeking further reductions and refunds of the same reduced rates. There is no conflict between the decision below and any decision of this Court or any other circuit. The only other case that previously addressed the same issue, the D.C. Circuit's decision in *NARI III*, accords with the decision below.

1. The ultimate responsibility for construing a regulatory statute resides in the courts.[12] Through a succession of cases involving recyclables, the D.C. Circuit has become uniquely familiar with the history of such regulation and Congress' successive revisions of the statute. See Pet. 4, n.2 (listing cases). In this case, the D.C. Circuit construed Section 204 in accordance with its literal language, prior practice and precedent, and elementary fairness.

In 1981, both the D.C. Circuit (in *NARI III*) and the Commission (in its October 1981 order) ruled that the railroads could comply with the first sentence of Section 204 by using territorial averages to adjust their recyclable rates to the statutory cap. The use of such territorial averages is, as the Commission found, the most feasible way of making broad-scale rate changes without disrupting the entire rate structure.[13] Such territorial average adjustments had been used by the ICC in the past in regulating recyclable rates as well as other commodities.[14] It is the essence of such group averaging, familiar through-

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[12] See, *e.g.*, *Louisiana Public Service Comm'n* v. *FCC*, 106 S. Ct. 1890 (1986); *SEC* v. *Sloan*, 436 U.S. 103 (1978); *NARI III*, 660 F.2d at 799 (citing cases).

[13] There are thousands of individual rates and, as the ICC found in *Ex Parte No. 394, supra*, 365 I.C.C. at 307 (Pet. App. 101a), "it would not be feasible to require the carriers to develop ratios for every individual movement."

[14] *Ex Parte No. 319*, 356 I.C.C. 114, 449-50 (1977), *remanded on other grounds, National Ass'n of Recycling Industries, Inc.* v. *ICC*, 585 F.2d 522 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 929 (1979).

out carrier and utility ratemaking,[15] that some individual rates will be above and some below the average.

The second sentence of Section 204 deals with such individual departures by providing, in explicit terms, that as long as any rate "equals or exceeds such average revenue-to-variable ratio [cap] . . . such rates shall not be required to bear any further rate increase." This construction, as the lower court pointed out, gives meaning to both sentences of Section 204.[16] It also avoids duplicative rate reductions or refunds for the railroads, and it means that inflation will ultimately bring all recyclable rates under the cap.

The claim in the certiorari petition (Pet. 12) that shippers are "back to square one" is nonsense. The basic aim of Section 204, as the ICC itself recognized, was achieved by the reduction of recyclable rates to the statutory cap level based on territorial averages. See p. 3, above. Those territorial averages embrace *all* recyclable rates in every segment where the rates exceeded the cap level. Far from denying the shippers the use of the complaint remedy (*cf.* Pet. 16), the D.C. Circuit reaffirmed that complaints *could* be used by shippers wherever railroads impermissibly raised individual rates that are already above the cap level.[17] What the court precluded is

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[15] *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *Chicago & N.W. Ry.* v. *Atchison, T. & S.F. Ry.*, 387 U.S. 326 (1967); *New England Divisions Cases*, 261 U.S. 184 (1923).

[16] The shippers are quite mistaken in suggesting (Pet. 9) that the lower court has read "rates" to have one meaning in the first sentence and another meaning in the second sentence of Section 204. In each case, the same rates are involved.

[17] The lower court made clear that it was not forbidding individual complaints "for policing above-the-cap rate increases." Order of April 4 1986 (Pet. App. 113a-114a). The Commission has adopted the same reading of the court's opinion in inviting shippers to amend their pending complaints to conform to *NARI VI*. See p. 4, n.11, above.

complaints that effectively seek further reductions or refunds of rates already reduced to the cap level on a territorial average basis.

2. The shippers' claim that the lower court violated the Hobbs Act [18] is, if anything, an even weaker candidate for review on certiorari than the claim under Section 204. Under the Hobbs Act, a party aggrieved by an ICC order may seek review in the Court of Appeals within 60 days after that order. 28 U.S.C. § 2344. The railroads complied with the terms of the Hobbs Act by seeking review within 60 days of the ICC order released July 20, 1983. That order explicitly considered and rejected the railroads' objection to complaints seeking further reductions and refunds of rates already reduced to the cap level on a territorial average basis. See p. 4 & n.9, above.

The shippers do not dispute that the railroads' petition for review was filed within 60 days of the July 20, 1983, ICC order. The gist of their claim is that the same issue resolved in the July 20, 1983, order had already been litigated and conclusively resolved against the railroads in the ICC's October 1981 order that approved the use of territorial averages. Pet. 13. No issue of law is presented by this claim because the lower court found, based on a review of the pleadings and orders involved, that the issue had not been litigated and conclusively resolved by the Commission in 1981.

There was ample basis for the D.C. Circuit's evaluation of the record:

- The issue of sharpshooting complaints following territorial average reductions and refunds was not addressed in any way in the pleadings that led up to the October 1981 order. *NARI VI*, 768 F.2d at 377 (Pet. App. 10a).

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[18] The Hobbs Act, 28 U.S.C. § 2341, *et seq.*, governs review of ICC orders in the Courts of Appeals.

- At the outset of the October 1981 order, in the listing of issues to be addressed in the decision, the issue of sharpshooting complaints was not mentioned as an issue to be resolved. 365 I.C.C. at 305 (Pet. App. 97a-98a).

- The October 1981 order contained no discussion of the various arguments concerning the permissibility *vel non* of such sharpshooting complaints. Compare 365 I.C.C. at 307 (Pet. App. 101a).

- The resolution of the issue was not necessary to the result reached in the October 1981 order approving territorial average adjustments and the ordering paragraphs did not address the sharpshooting issue in any way. 365 I.C.C. at 310 (Pet. App. 105a).

Even if the issue of sharpshooting complaints had been litigated and decided by the Commission in October 1981—which it was not—it is virtually certain that judicial review of the issue would not have been ripe at that time. *NARI VI,* 768 F.2d at 378 (Pet. App. 11a).[19] At that time, no such complaints had been filed (*id.*) and there was no basis for knowing whether any complaints would ever be filed after the territorial average reductions and refunds had been made. When shippers later did file such complaints, the railroads promptly sought a determination of their validity by the Commission. After the Commission ruled against the railroads in July 1983, they sought

[19] Indeed, several years later, after such complaints had in fact been filed and after the Commission had explicitly approved their use (in the July 1983 order) the ICC was still scarcely willing to admit that the issue of their validity was ripe for judicial review. See *NARI VI,* 768 F.2d at 378 (Pet. App. 11a). It is patent that the ICC would have effectively resisted judicial review on that issue if it had been sought in October 1981.

judicial review within 60 days following that determination. *Id.*

In sum, the shippers' procedural claim raises no question of law or principle, let alone one presenting a conflict between the circuits. The lower court created no "exception" to the Hobbs Act (Pet. 13) or *res judicata* principles. It simply found based on the record in this case that the issue in question had not previously been litigated and conclusively resolved by the agency. Such a fact-based controversy is plainly not appropriate for review on certiorari under the rules of this Court. See Sup. Ct. R. 17.1(a).

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

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RESPONDENT RAILROADS

Atchison, Topeka & Santa Fe Railway Company
Baltimore and Ohio Chicago Terminal Railroad Company
Baltimore & Ohio Railroad Company
Boston & Maine Railroad
Burlington Northern, Inc.
Chesapeake and Ohio Railway Company
Chicago and North Western Transportation Company
Cincinnati, New Orleans & Texas Pacific Railway Company
Consolidated Rail Corporation
CSX Transportation, Inc. (successor to Seaboard System Railroad, Inc. and Louisville & Nashville Railroad Company)
Delaware and Hudson Railway Company
Denver and Rio Grande Western Railroad Company, The
Elgin, Joliet and Eastern Railway Company
Grand Trunk Western Railroad Company
Green Bay and Western Railroad Company
Illinois Central Gulf Railroad Company
Kansas City Southern Railway Company
Louisiana & Arkansas Railway Company
Missouri-Kansas-Texas Railroad Company
Norfolk & Western Railway Company
Oklahoma, Kansas and Texas Railroad Company
Pittsburgh & Lake Erie Railroad Company
Richmond, Fredericksburg & Potomac Railroad Company
St. Louis Southwestern Railway Company
San Diego and Arizona Eastern Transportation Company
Santa Maria Valley Railroad Company
Soo Line Railroad Company (in its own right and as successor to Chicago, Milwaukee, St. Paul & Pacific Railroad Company)
Southern Pacific Transportation Company
Southern Railway Company

Terminal Railroad Association of St. Louis
Texas Mexican Railway Company, The
Ventura County Railway Company
Vermont Railway, Inc., The
Winston-Salem Southbound Railway Company

RULE 28.1 LISTING

The names of parent companies and of non-wholly-owned subsidiaries or affiliates of respondent railroads are set forth below. The names of respondents are capitalized for ease of reference. Counsel construes Rule 28.1 as not requiring the listing of affiliates of a respondent where such affiliates are wholly-owned by a named parent.

Santa Fe-Southern Pacific Corp. is the parent of respondents THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, and SOUTHERN PACIFIC TRANSPORTATION COMPANY. Related companies that have or may have outstanding securities in the hands of the public are:

Arkansas & Memphis Railway Bridge & Terminal Company
Central California Traction Company
Evergreen Leasing Corporation
Ogden Union Railway & Depot Company, The
Portland Terminal Railroad Company
Portland Traction Company
Santa Fe Energy Partnerships, Ltd.
Santa Fe Natural Resources, Inc.
Southern Pacific Company
Sunset Railway Company
Trailer Train Company

Guilford Transportation Industries, Inc. is the parent of respondents BOSTON AND MAINE RAILROAD and DELAWARE AND HUDSON RAILWAY COMPANY. Related companies that have or may have outstanding securities in the hands of the public are:

Albany Port Railroad
Albany and Vermont Railroad
Northern Railroad

Saratoga and Schenectady Railroad
Stony Brook Railroad Corporation
Vermont and Massachusetts Railroad Company

The CSX Corporation is the parent of respondents BALTIMORE AND OHIO RAILROAD COMPANY, CHESAPEAKE AND OHIO RAILWAY COMPANY, CSX TRANSPORTATION, INC. (formerly SEABOARD SYSTEM RAILROAD, INC. and LOUISVILLE & NASHVILLE RAILROAD COMPANY), RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY and WINSTON-SALEM SOUTHBOUND RAILWAY COMPANY. Related companies that have or may have outstanding securities in the hands of the public are:

Allegheny and Western Railway Company
Augusta and Summerville Railroad Company
Baltimore and Cumberland Valley Rail Road Extension Company, The
Baltimore and Philadelphia Railroad Company, The
Beaver Street Tower Company
Belt Railway Company of Chicago
Central Railroad Company of South Carolinia, The
Central Transfer Railway and Storage Company, The
Chatham Terminal Company
Chicago and Western Indiana Railroad Company
Clearfield and Mahoning Railway Company
Cleveland Terminal & Valley Railroad Company
Dayton and Michigan Railroad Company
Dayton and Union Railroad Company
Eastern Hardwoods, Incorporated
First Georgia Development Corporation
Fruit Growers Express Company
High Point, Thomasville & Denton Railroad Company
Home Avenue Railroad Company, The
James Center Development Company
Littleton Fuel Company

Mid Allegheny Corporation
Nashville & Decatur Railroad Company
New Gauley Coal Corporation
North Charleston Terminal Company
Paducah & Illinois Railroad Company
Richmond-Washington Company
Sea-Land Corporation
Wesjax Development Company
Woodstock & Blocton Railway Company

Burlington Northern, Inc., is the parent of respondent BURLINGTON NORTHERN RAILROAD COMPANY. Related companies that have or may have outstanding securities in the hands of the public are:

Belt Railway Company of Chicago, The
BN Financial Services, Inc.
Burlington Northern Airmotive, Inc.
Burlington Northern International Services, Inc.
Burlington Northern Railway Company
Butte Pipe Line Company
Camas Praire Railroad Company
Chicago Union Station Company
Colt Intermodal Inc.
Davenport, Rock Island and North Western Railway Company
Denver Union Terminal Railway Company, The
El Paso Company
Galveston Terminal Railway Company
Glacier Park Company
Glacier Park Liquidating Company
Houston Belt & Terminal Railway Company
Iowa Transfer Railway Company
Kansas City Terminal Railway Company
Keokuk Union Depot Company
Lake Superior Terminal and Transfer Railway Company, The

Longview Switching Company
Meridian Land & Mineral Company
Milestone Petroleum, Inc.
Minnesota Transfer Railway Company, The
New Mexico and Arizona Land Company
Paducah & Illinois Railroad Company
Plum Creek Timber Company, Inc.
Portal Pipeline Company
Portland Terminal Railroad Company
Pueblo Union Depot and Railroad Company, The
R-M Holdings Corporation
St. Paul Union Depot Company, The
Trailer Train Company
Wichita Union Terminal Railway Company, The
Winona Bridge Railway Company

Norfolk Southern Corporation is the parent of respondents CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, NORFOLK & WESTERN RAILWAY COMPANY, and SOUTHERN RAILWAY COMPANY. Related companies that have or may have outstanding securities in the hands of the public are:

Airforce Pipeline, Inc.
Alabama Great Southern Railroad Company, The
Algers, Winslow and Western Railway Company
Arrowood-Southern Company
Arrowood Southern Executive Park, Inc.
Athens Belt Line Railroad Company
Atlanta and Charlotte Air Line Railway Company, The
Atlanta Terminal Company
Atlantic and East Carolina Railway Company
Atlantic and North Carolina Railroad Company
Augusta and Summerville Railroad Company
Beaver Street Tower Company
Birmingham Terminal Company
Blue Ridge Railway Company

Camp Lejeune Railroad Company
Central of Georgia Railroad Company
Central Transfer Railway and Storage Company
Charlotte-Southern Corporation
Chatham Terminal Company
Chattanooga Station Company
Chattanooga Terminal Railway Company
Chesapeake Western Railway
Cincinnati Southern Railway
Citico Realty Company
Danville and Western Railway Company
Dereco, Inc.
Durham and South Carolina Railroad Company
Elberton Southern Railway Company
Fairport, Painesville and Eastern Railway Company
Fort Wayne Union Railway Company
1575 Eye Street Associates (Limited Partnership)
Georgia Midland Railway Company, The
Georgia Northern Railway Company, The
Georgia Southern and Florida Railway Company
High Point, Randleman, Asheboro and Southern Railroad Company
Interstate Railroad Company
Lake Erie Dock Company
Lambert's Point Docks, Incorporated
Lenoir Car Works
Live Oak, Perry and South Georgia Railway Company
Louisiana Southern Railway Company
Memphis and Charleston Railway Company
Mobile and Birmingham Railroad Company
Norfolk Southern Railway Company
Northern Ohio Food Terminal, Inc.
NW Equipment Corporation
Pocahontas Development Corporation
Pocahontas Kentucky Corporation
Pocahontas Land Corporation
Akron & Barberton Belt Railroad Company, The

Nickel Plate Improvement Company, Inc., The
Scioto Valley and New England Railroad Company, The
Shenandoah-Virginia Corporation
Toledo Belt Railway Company, The
National Investment Company, The
New Orleans Terminal Company
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk Southern Industrial Development Corporation
North Carolina Midland Railroad Company, The
North Carolina Railroad Company, The
North Charleston Terminal Company
Ocean Steamship Company of Savannah
Pine Brook Center Limited (Limited Partnership)
Queen City Developers (Limited Partnership)
Richmond, Fredericksburg and Potomac Railroad Company
Richmond-Washington Company
St. Johns River Terminal Company
700 North Fairfax Street Limited Partnership
The South Western Rail Road Company
Southern Rail Terminals, Inc.
Southern Rail Terminals of Alabama, Inc.
Southern Rail Terminals of North Carolina, Inc.
Southern Railway-Carolina Division
Southern Region Coal Transport, Inc.
Southern Region Distribution Services, Inc.
Southern Region Industrial Realty, Inc.
Southern Region Investment Company
Southern Region Materials Supply, Inc.
Southern Region Motor Transport, Inc.
State University Railroad Company
Tennessee, Alabama & Georgia Railway Company
Tennessee Railway Company
Terminal Properties, Inc.
Terminal Railroad Association of St. Louis
Trailer Train Company

Transylvania Railroad Company
Virginia Holding Corporation
Virginia and Southwestern Railway Company
Wabash Railroad Company
Wheeling and Lake Erie Railway Company, The
Woodstock & Blocton Railway Company
Yadkin Railroad Company

The CNW Corporation is the parent of respondent CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY. Related companies that have or may have outstanding securities in the hands of the public are:

Iowa Transfer Railway Company
Kansas City Terminal Railway Company
Lake Superior Terminal & Transfer Railway Company of the State of Wisconsin, The
Minnesota Transfer Railway Company, The
Peoria and Pekin Union Railway Company
Railbox Company
St. Paul Union Depot Company
Trailer Train Company

Canadian Pacific Limited is the parent of respondent SOO LINE RAILROAD COMPANY which is successor to respondent CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILWAY COMPANY. Related companies that have or may have outstanding securities in the hands of the public are:

Algoma Steel Corporation, Limited, The
AMCA Holdings (U.K.) Limited
AMCA International Limited
American Reinforcing Inc.
Amtel Chimie et Plastiques
Arrendadora Korco, S.A. de C.V. (Mexico)
Bedford Belt Railway Company, The
Belt Railway of Chicago

Bilsa, S.A.
Bomag Australia PTY Ltd.
Bomag-Nenck B.m.b.H.
Bomag S.A.F.
Brosses Osborn S.A.
Brushes International PLC (U.K.)
Brushes International do Brazil
Canada Line Agencies Limited, The
Canada Line Limited, The
Canada Line Services Limited, The
Canadian Pacific Enterprises Limited
Candian Pacific Oil and Gas Norway A/S
CanPac Maritime Agencies Limited
Cascade Pipe Line Limited
Cherry Burrell Holdings Corporation
Chicago, Terre Haute and Southeastern Railway Company
Cominco Ltd.
Compaloc
Corporate Foods Limited
Dandix, Inc. (U.S.A.)
Davenport, Rock Island and North Western Railway Company
Dendix Brushes Limited (U.K.)
Desa Industries (U.K.) Limited
Dominion Atlantic Railway Company, The
Dominion Bridge Sultzer, Inc.
Eastern Bakeries Limited
Energy Development (Management) Limited
Falt Towing Ltd.
Gem Power Brushes, Limited (U.K.)
Giddings & Lewis Foundation Inc.
Great Lakes Forest Products Limited
Greenex A/S
Hawaiian Western Steel Limited
Indiana Harbor Belt Railroad Company
Intrumentation Services, S.A.

Imodco International Inc.
KCL Leasing
Kansas City Terminal Railway Company
Kingston and Pembroke Railway Company, The
Koering Leasing
Koering Leasing Partners
Kremzar Gold Mines Limited
Lake Champlain and St. Lawrence Junction Railway Company, The
Lake Erie and Northern Railway Company, The
Lake St. Joseph Iron Inc.
Lake Superior Terminal and Transfer Railway Company
Litwin Arabia Ltd.
Litwin (U.K.) Limited
Manitoba and North Western Railway Company of Canada
Maple Shipping Company (U.K.) Limited
Marathon Aviation Terminals Limited
Massawippi Valley Railway Company
Mayo Forest Products Ltd.
Minnesota Transfer Railway Company, The
Montreal and Atlantic Railway Company, The
National Hardware Specialties Limited
Nippon Bomag C., Ltd. (Japan)
OTM Limited
Ontario and Quebec Railway Company
Orbs-Johnson Systems, Inc.
Osborn Foundry Machinery, Ltd.
Osborn International G.m.b.H. (W. Germany)
PanCanadian Petroleum Denmark A/S
PanCanadian Petroleum Limited
Pine Point Mines Limited
Pitt Street Developments Limited
Polytec S.A.R.L.
Princeton Gold Mines Limited
Ptarmigan Mines Limited
Robison Mines Limited

Rycon Mines Limited
Societe Anonyme des Machines Osborn (France)
St. Lawrence and Ottawa Railway Company, The
St. Paul Union Depot
Sault Ste. Marie Bridge Company
Soo Line Corporation
Southern Indiana Railway Company, The
Steep Rock Resources Inc.
Sunloch Mines Limited
Sunro Mines Limited (N.P.L.)
T.E.B.A. B.V.I.O. (The Netherlands)
Telesat Canada
Toronto, Grey and Bruce Railway Company
Toronto Terminals Railway Company, The
Trailer Train Company
Vestgron Mines Limited
Village Green Mall Ltd.
Vol Mines Limited
Webb Jarratt & Company Limited
Western Fabricators Inc.
Western Metal Products Inc.

Respondent CONSOLIDATED RAIL CORPORATION is the parent of the following related companies that have or may have outstanding securities in the hands of the public:

Akron & Barberton Belt Railroad Company
Albany Port Railroad Company
Belt Railway Company of Chicago
Calumet Western Railway Company
Chicago and Western Indiana Railway Company
Conrail Equity Corporation
Indiana Harbor Belt Railroad Company
Lakefront Dock and Railroad Terminal Company
Monongahela Railway Company
Nicholas, Fayette and Greenbrier Railroad Company
Peoria and Pekin Union Railway Company

Pittsburgh, Chartiers and Youghiogheny Railway Company
Railroad Association Insurance Ltd.

Kansas City Southern, Inc. is the parent of respondents KANSAS CITY SOUTHERN RAILWAY COMPANY and LOUISIANA & ARKANSAS RAILWAY COMPANY.

Katy Industries, Inc. is the parent of respondent MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, which is in turn the parent of respondent OKLAHOMA-KANSAS-TEXAS RAILROAD COMPANY. Related companies that have or may have outstanding securities in the hands of the public are:

Galveston, Houston and Henderson Railroad Company
Joplin Union Depot Company
Kansas City Terminal Railway Company
Oklahoma City Junction Railway Company
Terminal Railroad Association of St. Louis
Texas City Terminal Railway Company
Trailer Train Company
Wichita Union Terminal Railway Company

Itel Corp. is the parent of respondent GREEN BAY AND WESTERN RAILROAD COMPANY.

USX Corporation is the parent of respondent ELGIN, JOLIET AND WESTERN RAILWAY COMPANY.

The Anschutz Corporation is the parent of Rio Grande Industries, Inc., which is the parent of respondent DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY.

IC Industries, Inc. is the parent of respondent ILLINOIS CENTRAL GULF RAILROAD COMPANY.

Grand Trunk Corporation is the parent of respondent GRAND TRUNK WESTERN RAILROAD COMPANY.

Respondent TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS is wholly owned by other railroads that are listed respondents in this case.